

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

THE HON. JUDGE STEPHEN V. WILSON, JUDGE PRESIDING

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.) NO. 18-CR-00450-SVW
)
 CARLOS NAVA CISNEROS,)
)
 Defendant.)
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Monday, March 25, 2019

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I N D E X**GOVERNMENT'S
WITNESS****DIRECT CROSS REDIRECT RECROSS DIRE VOL**

Adam L. Halberstadt	5	17	30	34
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1 Los Angeles, California; Monday, March 25, 2019;

2 2:59 p.m.

3 -oOo-

4 THE CLERK: Item 5, CR-18-450-SVW, United States
5 of America versus Carlos Nava Cisneros.

6 Counsel, please state your appearances.

7 MR. ROSENBAUM: Good afternoon, Your Honor.
8 Matt Rosenbaum on behalf of the United States. To my left
9 is Assistant U.S. Attorney Julia Reese.

10 MS. REESE: Good afternoon, Your Honor.

11 MS. WAKEFIELD: Good afternoon, Your Honor.
12 Georgina Wakefield and Gabriela Rivera on behalf of
13 Carlos Nava Cisneros who is present on bond and using a
14 Spanish-language interpreter.

15 THE COURT: This is the time for evidentiary
16 hearing on the motion to dismiss. In particular, the Court
17 wanted to hear evidence regarding the issue of whether
18 California law includes both geometric and optical isomers
19 of methamphetamine because the federal law includes only
20 optical isomers. And the Government has offered the
21 testimony of a witness.

22 Is there any expert testimony from the defense?

23 MS. WAKEFIELD: No, Your Honor. We are requesting
24 an opportunity to cross-examine.

25 THE COURT: Yes, that's why I wanted to hold the

1 hearing because I did consider the declaration.

2 So is the witness here?

3 MS. REESE: Yes, Your Honor, he is.

4 THE COURT: Let's have him come forward, or she,
5 whoever it is.

6 MS. REESE: It's a he, Your Honor. And if I may,
7 the Government is prepared to submit substantively on the
8 declarations. However, the defense has raised Daubert and
9 Rule 702 issues, and so if I may, I'd like to ask a few
10 questions to that end either before Ms. Wakefield poses her
11 questions or --

12 THE COURT: You can do it before.

13 THE CLERK: The witness will please step forward
14 and stand behind the court reporter.

15 ADAM LEE HALBERSTADT, GOVERNMENT'S WITNESS, SWORN

16 THE CLERK: State your full name and spell it for
17 the record.

18 THE WITNESS: Adam Lee Halberstadt,
19 H-a-l-b-e-r-s-t-a-d-t.

20 Do you want me to spell my first name?

21

22 DIRECT EXAMINATION

23 BY MS. REESE:

24 Q Good afternoon, Professor Halberstadt. How are you?

25 A I'm good. Thank you.

1 Q What do you do for a living?

2 A I am an associate professor of psychiatry at the
3 University of California San Diego.

4 Q And what is the educational background that you have
5 that qualifies you for that position?

6 A So I have a B.A. in Neurology, got that at the
7 University of Delaware, and then I have a Ph.D. in
8 Neuroscience which was from the University of Pittsburgh,
9 and I've also done a post-doctoral fellowship at University
10 of California San Diego in pharmacology.

11 Q And when did you complete your Ph.D.?

12 A It was in 2006.

13 Q And how long have you been a professor?

14 A I started working as a faculty member in 2012, so I
15 moved up to, first, as an assistant research scientist, and
16 then I became an associate professor, and then last year I
17 was promoted to associate professor.

18 Q And do you have any kind of specialty or area of focus
19 that you work on?

20 A I focus on psychopharmacology, which is the study of
21 how chemical compounds affect the brain, interact with
22 receptors in the body. And medications. How it impacts the
23 physiology of animals and humans.

24 Q From your education and employment, have you become
25 familiar with the substance methamphetamine?

1 A Yes, I have.

2 Q And how have you become familiar with it?

3 A We work with methamphetamine in studies. We work with
4 other chemicals that have a similar structure. We publish
5 papers on methamphetamine and other compounds in the same
6 family of substances.

7 Q When you say "we," do you mean you?

8 A Me and my colleagues, yes, other people that I work
9 with. So we publish papers together.

10 Q So you've published papers relating to methamphetamine
11 itself?

12 A Yes, I have.

13 Q So from that work, have you become familiar with the
14 chemical structure of methamphetamine?

15 A Yes, I have.

16 Q Now, I want to ask you a few other questions about
17 other chemistry terms.

18 First of all, though, do you have a background in
19 chemistry?

20 A Yes. I've taken classes in chemistry when I was in
21 college and also as a graduate student, and we work with a
22 lot of different chemistry in our day-to-day experimental
23 work. We also have a laboratory that's actually constructed
24 just to make new chemicals that we use in our experiments,
25 too. So we have a wet lab that works with chemistry in my

1 space at UCSD.

2 Q Now, based on your experience and your education, are
3 you familiar with what a geometric isomer is?

4 A Yes, I am.

5 Q What is it?

6 A So a geometrical isomer is a type of isomer where you
7 have -- it has the same atoms and the same number as another
8 compound that's -- that it would be a geometrical isomer of.
9 The atoms are arranged, bonded together in the same way, but
10 the three-dimensional structure is different.

11 So they have the same atoms and the same
12 connectivity, but there's difference in the
13 three-dimensional spacial structure.

14 Q Are you familiar with the term "diastereomer"?

15 A Yes, it's a synonym for a geometrical isomer.

16 Q And what is -- if you were to give a definition
17 chemically for what a diastereomer is, what would that
18 definition be?

19 A Sure. So there's two different types of stereoisomers
20 you can have. So as I said, these are compounds that
21 have -- they have the same atoms and the same connectivity,
22 but they have different spatial arrangement.

23 And so there's two types of stereoisomers. One
24 type is enantiomer which are compounds that are mirror
25 images of one another. So they're isomers, but they're

1 mirror images, sort of how your hands have the same fingers,
2 they're connected together in the same way, but they're not
3 spatially the same.

4 So one type of stereoisomer is an enantiomer. The
5 second type of stereoisomer is a geometrical isomer. And
6 that is where the compounds are -- that is where the
7 compounds are -- sorry. I'm getting a little bit nervous.
8 That is where the compounds are -- sorry about that.

9 Q I can ask you another question.

10 A Can you ask me the question again. I'm sorry.

11 Q I think you were talking a little bit there about
12 stereoisomers, which I think is because I misspoke.

13 So what is a diastereomer?

14 A So a diastereomer is a compound that is -- so it's a
15 stereoisomer, but it's not a mirror image.

16 So you have enantiomers which are stereoisomers
17 which are mirror images, and then you have diastereomers or
18 geometrical isomers which are stereoisomers which are not
19 mirror images.

20 Q Now, are you also familiar with the term
21 "stereocenter"?

22 A Yes, I am.

23 Q What is a stereocenter?

24 A A stereocenter is an atom in a molecule that's
25 connected to other groups, usually three or more groups,

1 where if you exchange any two of the groups, you will
2 produce a stereoisomer.

3 Q And these definitions that we have just discussed, are
4 those definitions generally agreed upon in your field and
5 the field of chemistry, generally?

6 A Yes, they are. If you look at a textbook, you'll see
7 those definitions.

8 Q So those definitions have been published in textbooks?

9 A They have, and in journal articles. Exactly.

10 Q And does methamphetamine have any geometric isomers or
11 diastereomers?

12 A No, it does not.

13 Q How do you know that?

14 A Well, because of the definition of geometrical isomers.
15 So enantiomers can occur in molecules that have only one
16 stereocenter, but diastereomers or geometric isomers require
17 at least two stereocenters. So if you don't have two
18 stereocenters in a molecule, it can't have geometrical
19 isomers. It's just not possible based on a definition of a
20 geometrical isomer.

21 Q So a geometrical isomer is the same thing as a
22 diastereomer?

23 A They're synonyms, yes.

24 Q And in order for something to be diastereomer, is it
25 your testimony that it must have at least two stereocenters?

1 A At least two, yes.

2 Q So if something only has one stereocenter, then, it
3 can't possibly be a diastereomer?

4 A Yes, exactly.

5 Q And what we've just discussed again, those definitions,
6 are those generally agreed upon in your field?

7 A Yes, those are the definitions that are used by
8 chemists to refer to substances.

9 Q And I'd like to refer to a demonstrative. You'll see
10 there's a stack of papers right up in front of you.

11 Do you recognize those papers?

12 A Yeah, those are images that I've seen before, yes.

13 Q Do you see your initials on them?

14 A Yes, I do.

15 Q So you've reviewed these pages before your testimony
16 today?

17 A I have.

18 Q I'm going to put -- I may put this on the screen. I
19 will try very hard. Well, it looks like our auto focus is
20 not working very well right now, so I will improvise.

21 MS. REESE: Your Honor, do you have a copy of this
22 for your reference? Just so that everyone's on the same
23 page --

24 And, Ms. Wakefield, I believe you have a copy,
25 too.

1 So there are page numbers in the bottom right-hand
2 corner. I will refer to those page numbers, then.

3 THE COURT: We should mark this as Court's
4 Exhibit 1.

5 MS. REESE: Yes, I will, Your Honor. And to that
6 end -- thank you for the reminder -- I'd offer it as well.

7 THE COURT: It's received.

8 (Court's Exhibit 1 received in evidence.)

9 BY MS. REESE:

10 Q And page 1 of the demonstrative, Court's Exhibit 1 that
11 you have in front of you, what is shown there?

12 A This is a compound that has two stereocenters, and so
13 if you look -- if you compare the compounds -- so it's the
14 same compound, but these are geometrical isomers. So if you
15 look at the two compounds, you'll see that the top
16 stereocenter, so the one at the top -- this is a mirror
17 image between the two compounds.

18 Q Before you go on, let me ask you a question. There are
19 some areas on here that are circled.

20 What are those?

21 A Sorry, sorry, yes. The two areas that are circled on
22 both of these compounds are the stereocenters.

23 Q So what type of isomers are these?

24 A So these are geometrical isomers.

25 Q These are geometrical isomers. So what's shown here on

1 page 1 is not methamphetamine?

2 A No, it is not.

3 Q How do you know it's not methamphetamine?

4 A Just by looking at the structure.

5 Q And moving on to page 2, what have you circled there on
6 page 2 of Court's Exhibit 1?

7 A Those are the stereocenters.

8 Q What type of isomer is this?

9 A These are mirror images, and they are enantiomers.

10 Q Are they also geometric isomers?

11 A No, they are not.

12 Q Why not?

13 A Because they're mirror images, and so only enantiomers
14 are mirror images.

15 Q Page 3, what compound is shown on -- actually, let me
16 start with page 4. What compound is shown on page 4 of
17 Court's Exhibit 1?

18 A So this would be methamphetamine.

19 Q And what have you circled on page 4 of Court's
20 Exhibit 1?

21 A That is a stereocenter.

22 Q How many stereocenters are there circled on page 4 of
23 Court's Exhibit 1?

24 A One single -- just one.

25 Q What does that mean?

1 A That means that it cannot be a geometrical isomer or
2 cannot have geometrical isomers. That it's an enantiomer.

3 Q And going back to page 3 of Court's Exhibit 1, what is
4 shown here?

5 A So these are the two stereoisomers of methamphetamine.
6 One of the stereoisomers is called dextro-methamphetamine,
7 the other stereoisomer is called levo-methamphetamine.
8 They're two enantiomers. And you can see that these are
9 mirror images of one another.

10 Q So methamphetamine has two enantiomers?

11 A Yes.

12 Q But it has no geometric isomers?

13 A No, it does not.

14 Q And no diastereomers?

15 A No.

16 Q And you can tell that because methamphetamine only has
17 one stereocenter?

18 A Yes, exactly.

19 MS. WAKEFIELD: Objection. Leading.

20 BY MS. REESE:

21 Q How can you tell that methamphetamine does not have any
22 diastereomers or geometric isomers?

23 A So if you look at the structure, and you look at each
24 atom in the structure, you can see whether it would be
25 classified as a stereocenter. So you can look to see -- if

1 you invert -- if you take the groups at each atom and you
2 change the orientation -- so the circled region here,
3 there's a methyl group attached to it.

4 THE COURT: Are you at page 3?

5 THE WITNESS: Yes. Yes, I am.

6 So on page 3, at the circled region, that's known
7 as the alpha carbon, that's positional name for that carbon,
8 and it isn't shown in the diagram, but there's also a
9 hydrogen attached to that alpha carbon. That's left out
10 just by convention, but it's there implicitly. So you can
11 see that there's a background, which is a chain. That's the
12 lines that's are squiggly. That's what you call a backbone.
13 That's sort of the core structure.

14 And then you have at the bottom a methyl group
15 projecting off, but the methyl group isn't really projecting
16 down, it's down in the page. But in reality, this is a
17 three-dimensional structure. And so the line that's dashed
18 that denotes in three dimensions that the group is actually
19 projecting down through the page.

20 So it would be going this way. And there's an
21 implicit hydrogen there which isn't shown just by convention
22 and so it has to have the opposite orientation. So, in this
23 case, the hydrogen would be pointing out of the plane of the
24 page, perpendicular to the plane actually.

25 So if you look across and if you actually took the

1 hydrogen and the methyl group that are attached to that
2 alpha carbon and you foot them so that the methyl group was
3 pointing up out of the page and hydrogen was pointing down,
4 those would be different isomers. They're stereoisomers
5 because they have a different spatial orientation. So you
6 know that there's one stereocenter there.

7 Then you can look at each of the different atoms
8 in methamphetamine to see whether something similar happens,
9 and there's no where else in the molecule where that will
10 actually happen. So that's how you can tell that there's
11 only one stereocenter in the methamphetamine molecule.

12 You can examine the molecule and decide based on
13 the definition whether there's other stereocenters. And
14 just based on the definition, you can see that there's only
15 a stereocenter in the molecule.

16 Q And because there's only one stereocenter, what is your
17 conclusion regarding whether there are diastereomers or
18 geometric isomers of methamphetamine?

19 A That there cannot be geometrical isomers of
20 methamphetamine.

21 MS. REESE: Nothing further at this time,
22 Your Honor.

23 THE COURT: Cross-examination.

24

25 ///

CROSS-EXAMINATION

1 BY MS. WAKEFIELD:

2 Q Good afternoon.

3 A Good afternoon.

4 Q Your declaration in this case, it identified two
5 optical isomers of methamphetamine; correct?

6 A Yes.

7 Q And your declaration said that besides those two
8 optical isomers, no other isomers are possible; correct?

9 A No other stereoisomers.

10 Q Okay. So there are stereoisomers?

11 A There are. Those are the enantiomers that I -- they
12 were pictured in my declaration. It was shown on page 3,
13 the page marked 3 here.

14 Q So those are stereoisomers of methamphetamine?

15 A Yes.

16 Q Now, in preparation for your testimony, the Government
17 showed you an article that identified 1-phenyl-3-aminobutane
18 as a geometric isomer of methamphetamine; correct?

19 A Yes.

20 MS. WAKEFIELD: Your Honor, I'd like to hand the
21 witness a copy of that article, and the Court as well.

22 And, Your Honor, I've marked this as Defense
23 Exhibit 103, and I'd move to admit it.

24 THE COURT: Let's call it Court's Exhibit 2.

1 MS. WAKEFIELD: Okay.

2 THE COURT: It's received.

3 (Court's Exhibit 2 received in evidence.)

4 MS. WAKEFIELD: Thank you.

5 BY MS. WAKEFIELD:

6 Q This article was published in the Journal of Analytical
7 Toxicology; correct?

8 A Yes.

9 Q And it identifies at the last paragraph in the
10 introduction -- let's call it the second paragraph in the
11 introduction in parenthesis, it identifies
12 1-phenyl-3-aminobutane (a geometric isomer of
13 methamphetamine); correct?

14 A Yes, it says that.

15 Q Now, the Journal of Analytical Toxicology is a
16 peer-reviewed journal?

17 A Yes, I believe it is.

18 Q Now, in your preparation for your testimony, you told
19 the Government that 1-phenyl-3-aminobutane is a structural
20 isomer of methamphetamine; is that correct?

21 A I believe I said a constitutional isomer, but I'd have
22 to look back over what we said in the conversation to be
23 sure.

24 Q Would it refresh your memory to take a look at the
25 e-mail you sent to the Government?

1 A Sure.

2 MS. WAKEFIELD: Your Honor, may I approach?

3 THE COURT: Yes.

4 BY MS. WAKEFIELD:

5 Q And if you can read the third sentence to yourself and
6 let me know if that refreshes your memory.

7 A Yes.

8 Q So you called it a structural, and then in parens,
9 constitutional isomer; correct?

10 A Yes.

11 Q Your opinion is that 1-Phenyl-3-aminobutane is an
12 isomer of methamphetamine; correct?

13 A It is a type of isomer of methamphetamine, yes.

14 Q Now, you're familiar with the Compendium of Chemical
15 Terminology published by the International Union of Pure and
16 Applied Chemistry; correct?

17 A I haven't examined the compendium. I've looked at the
18 instructions they have online.

19 Q That's called the "Gold Book"; right?

20 A Yes.

21 Q Now, the Gold Book is a publication for standardizing
22 the nomenclature used in the field of chemistry; correct?

23 A Yes, exactly.

24 Q Now, there is no entry in the Gold Book for the term
25 "structural isomer"; correct?

1 A I would have to look at it to see.

2 Q Now, in the Gold Book, the term "geometrical isomer" is
3 considered obsolete; correct?

4 A Yes.

5 Q It's use is discouraged; right?

6 A Yes, it is.

7 Q Now, your testimony is that geometrical isomer is
8 synonymous with diastereomer; correct?

9 A Yes, people use -- some chemists use it the same way,
10 yes.

11 Q That's not how the Gold Book uses it; correct?

12 A It may not be.

13 Q Would you like to take a look at it?

14 A Sure, yes.

15 THE CLERK: Is there an exhibit number for the
16 e-mail?

17 MS. WAKEFIELD: Should we call it Court's
18 Exhibit 3?

19 THE COURT: Yes.

20 (Court's Exhibit 3 received in evidence.)

21 MS. WAKEFIELD: May I approach, Your Honor?

22 THE COURT: Yes.

23 MS. WAKEFIELD: We'll call this Court's Exhibit 4.

24 BY MS. WAKEFIELD:

25 Q Now, this is the entry in the Gold Back for geometrical

1 isomerism; correct?

2 A Yes, that is the entry.

3 Q And it says it's an obsolete synonym for cis-trans
4 isomers; correct?

5 A Yes.

6 Q It does not say it's a synonym for diastereoisomers;
7 correct?

8 A No, it does not say that.

9 Q In fact, the Gold Book defines diastereoisomers as
10 stereoisomers, other than enantiomers; correct?

11 A Yes, I believe it does.

12 Q So the Gold Book does not identify geometric isomers as
13 a synonym for diastereoisomers; correct?

14 A It may not, no.

15 Q Well, you have the definition in front of you. The
16 Gold Book identifies it as an obsolete for synonym for
17 cis-trans isomerism; correct?

18 A Yes, it says that here.

19 Q Cis-trans isomers can be diastereoisomers; correct?

20 A Yes, they're a subset.

21 Q They're a subset. They're not terms that overlap
22 completely; correct?

23 A It's a subset.

24 Q Diastereoisomers can also include other isomers;
25 correct?

1 A It can include isomers that are not cis-trans isomers,
2 yes.

3 Q So it can include configurational isomers?

4 A No.

5 Q So your testimony is that diastereoisomers cannot
6 include configurational isomers; is that correct?

7 A You would have to define the term for me.

8 Q Can you define the term for us?

9 A Well, there's not -- some terms don't have standardized
10 definitions. That's the problem we're having with
11 diastereomer here and geometric isomer. It's an obsolete
12 term, so it doesn't have a standard definition.

13 Q So the term "geometrical isomer" doesn't have a
14 standard definition; correct?

15 A It's used multiple ways.

16 Q And the term "diastereoisomers," that doesn't have a
17 standard definition; correct?

18 A No, it does. That does.

19 Q Does the term "diastereoisomers" include
20 configurational isomers?

21 A I'd have to see the definition of configurational
22 isomers.

23 Q And what definition would you need to use -- what
24 resource would you need to use?

25 A A book that defined it.

1 Q So you don't know from your training and experience a
2 standard definition for the term "configurational isomers"?

3 A It has multiple definitions that I've seen used.

4 Q How about the term "conformational isomers"?

5 A Conformational isomers? Those are stereoisomers.

6 Q So they're a type of stereoisomer?

7 A Yes.

8 Q Are they a type of diastereoisomer?

9 A That, I'm not sure.

10 Q What about epimers, e-p-i-m-e-r-s?

11 A That's a type of enantiomer.

12 Q Is it a type of diastereoisomer?

13 A I'm not sure.

14 Q Now, you testified that diastereoisomer are broader
15 than -- that term is broader than cis-trans isomers;
16 correct?

17 A Yes.

18 Q So they're not synonymous; correct?

19 A Well, they can be.

20 Q They can be, but they're not always?

21 A Yes.

22 Q And, in your declaration, you did not identify that
23 they're not always synonymous; correct?

24 A I'd have to look back over my declaration.

25 Q Now, I want to talk about methamphetamine,

1 specifically. There are two electrons attached to the
2 hydrogen atom in methamphetamine; correct?

3 A Which hydrogen atom are you talking about?

4 Q Are there two electrons attached to any of the hydrogen
5 atoms?

6 A When they bond, yes.

7 Q Now, the electrons, they move quickly; right?

8 A Do you mean move around the nucleus?

9 Q Yes.

10 A Yes.

11 Q There could be a snapshot in time where the electron is
12 switching place with the hydrogen atom; correct?

13 A Can you rephrase that, please.

14 Q There can be a snapshot in time when the electron is
15 moving and switching place with the hydrogen?

16 A You mean it's moving from one atom to another?

17 Q Yes.

18 A The electrons do -- when there's bonding, electrons are
19 transferred from one atom to another.

20 Q So that snapshot, when it's transferring, that would
21 not be a perfect mirror image; correct?

22 A I'm not sure I follow what you mean.

23 Q If there's a snapshot in time when the electron is
24 switching place, there would be a snapshot in time where the
25 molecule was not a perfect mirror; correct?

1 A The mirror of what?

2 Q Where it's not an optical isomer; correct?

3 A Are you asking me if the isomers can sometimes -- the
4 optical isomers are sometimes optical isomers?

5 Q When the electrons is switching place, yes.

6 A So when bonding occurs between atoms, they exchange
7 electrons, but it doesn't change the structure of the
8 molecule. The structure is fixed, unless it's changed by
9 some other force or it happens spontaneously.

10 Q I want to talk about your background. You, in
11 preparing for today's hearing, you told the Government you
12 are not an expert in California's definition of
13 methamphetamine; correct?

14 A No, I'm not an expert in the definition according to
15 the Controlled Substance Act in California, no.

16 Q You haven't reviewed any legislative history; correct?

17 A No, I haven't.

18 Q You don't know how the legislature came to define
19 methamphetamine?

20 A No, I don't.

21 Q You don't know how the legislature came to define
22 geometric isomers?

23 A No, I don't.

24 Q In fact, you testified that that term can have
25 different meanings; correct?

1 A Yes.

2 Q And you don't know how the legislature came to define
3 diastereomeric isomers; correct?

4 A I don't analyze legislative history, no.

5 Q You don't know whether the legislature heard scientific
6 testimony?

7 A No.

8 Q You don't know whether the legislature considered
9 scientific articles?

10 A No.

11 Q Your Ph.D. is in neurobiology; correct?

12 A Yes.

13 Q You testified you have a bachelor of arts degree in
14 Biological Sciences and Psychology; correct?

15 A Yes, it was a combined program that gives you a -- it's
16 a neuroscience program with degrees that you come out are in
17 biology and psychology.

18 Q You don't have any degrees in chemistry?

19 A No, I do not.

20 Q Your research focuses on the effects of drugs on the
21 brain?

22 A Yes.

23 Q Specifically, you have studied the effects of
24 hallucinogens on the brain?

25 A That's one type of product that we worked on, yes.

1 Q Your articles that you've published have focused on the
2 effects of hallucinogens on the brain?

3 A Some of them have.

4 Q Methamphetamine is not a hallucinogen; correct?

5 A No, but we've published articles on methamphetamine.

6 Q You personally have not authored any articles on
7 methamphetamine?

8 A That's not true.

9 Q You spoke with the Government in December of 2018;
10 correct?

11 A Yes.

12 Q And when you spoke with them, you told them you had not
13 authored any articles on methamphetamine?

14 A Yes, that was not -- that was a mistake.

15 Q So when you told the Government that in December, that
16 was a mistake?

17 A Yes.

18 Q And you told them you had not published any research on
19 methamphetamine; correct?

20 A Yes.

21 Q And you told them you hadn't worked with
22 L-methamphetamine at all; correct?

23 A Yes.

24 Q Now, you work in the Department of Psychiatry at the
25 University of California at San Diego; correct?

1 A Yes, I do.

2 Q Your job title is associate adjunct professor; correct?

3 A Yes.

4 Q And your job title before that was assistant adjunct
5 professor; correct?

6 A Yes.

7 Q There is a difference between an adjunct professor and
8 a professor who is not an adjunct professor; correct?

9 A You want me to explain the difference at UCSD?

10 Q Sure.

11 A So at UCSD, adjunct titles are there because the
12 university doesn't pay our salary, so we have to pay our
13 salary based on bringing in grant money. So the adjunct
14 title is an internal title that just denotes where our
15 salary is paid from, where the funds come from.

16 There are some people that work at UCSD that are
17 paid directly by the university and at least for their
18 salary don't have to get grant money. But in my series, I
19 have to get money from my research separate from the money
20 that comes from the university, so that's why I'm considered
21 an adjunct associate professor.

22 Q Now, an associate adjunct professor does not have
23 tenure; correct?

24 A No.

25 Q An associate professor does have tenure; correct?

1 A Yes.

2 Q So there's a difference between an associate adjunct
3 professor and an associate professor; correct?

4 A In terms of the -- in terms of the internal job
5 description at UCSD, yes.

6 Q And in terms of the pay; correct?

7 A No.

8 Q In terms of whether the pay comes from the university
9 or from an outside source; correct?

10 A Well, all the money goes to UCSD first, so it doesn't
11 change how the job operates day-to-day, it just changes
12 where UCSD gets the money from to pay you.

13 Q And there's a difference between the tenure; correct?

14 A Theoretically. It doesn't -- there's no -- there's no
15 real job security for most people in the department.

16 Q But an associate professor has tenure; correct?

17 A That's my understanding, yes.

18 Q An associate adjunct professor does not; correct?

19 A That's my understanding.

20 MS. WAKEFIELD: One moment, please, Your Honor.

21 Nothing further. Thank you, Your Honor.

22 THE COURT: Any further questions from the
23 Government?

24 MS. REESE: Yes, Your Honor, may I?

25 May I approach the witness and the bench,

1 Your Honor, with terms to reference?

2

3 REDIRECT EXAMINATION

4 BY MS. REESE:

5 Q Professor Halberstadt, you were asked some questions
6 regarding the article by Gilbert by Ms. Wakefield.

7 Do you remember those questions?

8 A Yes, I do.

9 Q And I've handed up to you an article by -- sorry. You
10 were asked -- the questions you were asked didn't relate to
11 the article by Gilbert, I suppose. It related to the
12 article by Branum.

13 I've handed you an article by an individual named
14 Richard Gilbert, and I suppose --

15 MR. REESE: Could we mark this Court's Exhibit 4?

16 THE CLERK: Five.

17 MS. REESE: Court's Exhibit 5.

18 And may I offer it into evidence, Your Honor?

19 THE COURT: Yes, it's received.

20 (Court's Exhibit 5 received in evidence.)

21 BY MS. REESE:

22 Q And on page -- what is numbered as page 85, the second
23 page of the article that I've shown you, does that contain a
24 diagram of the 1-phenyl-3-aminobutane structure that was
25 referenced in the Branum article?

1 A Yes, it does. They labeled it differently, but it's
2 the same compound, and that is Compound B in Figure 1.

3 Q So Compound B in Figure 1 is the same
4 1-phenyl-3-aminobutane compound that is referenced in the
5 Branum article?

6 A Yes, it is.

7 Q Looking at Compound B in the Gilbert article, is that
8 methamphetamine?

9 A No, it's not.

10 Q How do you know?

11 A Because methamphetamine is Molecule D in that figure.

12 Q So what about Molecule B in this figure tells you that
13 it is not methamphetamine?

14 A It has a completely different structure. It contains
15 all the same -- it contains all the same atoms, so it's a
16 constitutional isomer, but if you look at the arrangement of
17 the atoms, so if you compare B and D, the arrangement is
18 completely different.

19 So in B, there's a ring structure, benzium ring,
20 and then there's -- you count them one, two, three carbon
21 atoms in the chain; and then at the end there's an amino
22 group, that's the nitrogen, the nh2. So if you look at
23 Molecule D, methamphetamine, there's a ring structure.
24 That's a benzium ring, and then you can see there's two
25 carbons, and then an amino group.

1 So Compound B has a ring, and then three carbons
2 and an amino group, while Compound D, methamphetamine, has a
3 ring, and two carbons and an amino group. That's not the
4 same structure.

5 Q Does the Branum article's reference to "geometric
6 isomers of methamphetamine" change your conclusion about
7 whether such isomers actually exist?

8 A No, it does not.

9 Q Are you aware of any other scientific articles that
10 reference geometric isomers of methamphetamine?

11 A I've never seen any other articles, no.

12 Q And you were also asked some questions about the Gold
13 Book's definition of geometric isomerism.

14 A Yes.

15 Q And about cis-trans isomerism?

16 A Yes.

17 Q What are cis-trans isomers?

18 A Cis-trans isomers are a subset of geometric isomers.
19 So they still fall in the definition of a geometric isomer,
20 but they are a subset because they deal with compounds that
21 specifically have rigid carbon-carbon bond. So most
22 carbon-carbon bonds -- single bonds will rotate, but
23 carbon-carbon bonds can also be rigid, either because
24 they're held in place by a double bond or because they're
25 part of a ring structure.

1 And so if you have a rigid carbon-carbon bond, and
2 then there's two functional groups attached to carbons that
3 make up the bond with one located on one end of the
4 carbon-carbon bond and the other functional group on the
5 other, that produces a situation where you can have
6 cis-trans isomers, so it's a subset of geometric isomers.
7 So not all geometric isomers are cis-trans isomers -- sorry.
8 Yes, not all geometrical isomers are cis-trans isomers, but
9 all cis-trans isomers are geometric isomers.

10 Q Do cis-trans isomers of methamphetamine exist?

11 A So, it would require you having a rigid carbon-carbon
12 bond with a functional group on either end. If you look at
13 the structure of methamphetamine, if you look at each atom,
14 you don't see a situation where that occurs.

15 Q Have you prepared a declaration regarding whether
16 cis-trans isomers of methamphetamine exist?

17 A Yes, there is one in another case.

18 Q And do you have that up there with you?

19 A Yes. Yes, I do.

20 Q Do you recognize that declaration?

21 A Yes, I do.

22 Q Is that your signature on the bottom?

23 A It is.

24 Q Do you adopt that declaration?

25 A Yes, I do.

1 MS. REESE: Your Honor, the Government offers this
2 as Court's Exhibit 6.

3 THE COURT: Received.

4 (Court's Exhibit 6 received in evidence.)

5 MS. REESE: Nothing further, Your Honor.

6 THE COURT: Do you wish to inquire further?
7

8 RECROSS-EXAMINATION

9 BY MS. WAKEFIELD:

10 Q Professor Halberstadt, your testimony is that cis-trans
11 isomers are a subset of geometric isomers?

12 A Yes.

13 Q And that definition that you're using, that's
14 inconsistent with the Gold Book; correct?

15 A Well, the Gold Book -- so it's an obsolete term, so
16 they don't give a comprehensive definition of geometric
17 isomers. They just give the most common definition.

18 Q And they say it's an obsolete term used as a synonym
19 for cis-trans isomers; correct?

20 A Yes, but it's also used as a synonym for other types of
21 isomers, yes, other types of diastereomers.

22 Q Fair to say that all of these terms are used
23 differently in different contexts?

24 A The term "geometric isomer" has been used in two
25 different ways, yes.

1 Q And it's the same with cis-trans isomers; correct?

2 A A cis-trans isomer has a specific definition.

3 Q But the Gold Book defines geometric isomers as a
4 synonym of cis-trans isomers; correct?

5 A Yes, that's how they define it, yes.

6 Q But you have a different definition?

7 A No, I'm just -- I'm just explaining how the term is
8 used in the literature.

9 Q The literature, besides the Gold Book; correct?

10 A Yes, the Gold Book is only a recommendation for how
11 chemists should name compounds, and they're not even
12 recommending a specific term for this. They're just
13 explaining one way that it's been used.

14 Q So the Gold Book is the standardly accepted textbook on
15 naming chemical terms; correct?

16 A It's a formalization of rules that chemists have
17 developed to name compounds.

18 Q It's generally accepted within the field of chemistry;
19 correct?

20 A It isn't used in every purpose in journal articles,
21 it's a recommendation for how to name things formally.

22 Q And the recommendation for geometric isomers is from
23 1996; correct?

24 A I wouldn't view this as a recommendation, I would view
25 it as an explanation.

1 MS. WAKEFIELD: One moment, Your Honor.

2 BY MS. WAKEFIELD:

3 Q Do you have the Gold Book of geometric isomerism in
4 front of you?

5 A Yes, I do.

6 Q Do you see under the word "source"?

7 A Yes.

8 Q And you see it cites to the recommendations of 1996?

9 A Yes.

10 Q So the source for this definition is from the
11 International Union of Pure and Applied Chemistry, their
12 recommendations that they issued in 1996; correct?

13 A Yeah, but they're recommending that the term not be
14 used.

15 Q They're recommending that the term not be used and it
16 be defined as an obsolete synonym for cis-trans isomerism;
17 correct?

18 A Yes, that's how they're explaining it.

19 MS. WAKEFIELD: One moment, please.

20 Nothing further. Thank you, Your Honor.

21 THE COURT: The parties have a few minutes to sum
22 up, and then I'll take the matter under submission. Do you
23 want to give me your sum-up position.

24 MR. ROSENBAUM: Your Honor, there's a second
25 witness available. The immigration officer who was

1 present --

2 THE COURT: This is the only issue that I need
3 testimony about. So let me hear your sum up on this witness
4 briefly.

5 MS. REESE: Your Honor, would you like the witness
6 excused at this point?

7 THE COURT: He can sit there. You don't have to
8 go through all his testimony. Just give me the essence of
9 what you think is most persuasive.

10 MS. REESE: Your Honor, clearly the parties are in
11 agreement about at least one thing or at least there's no
12 factual dispute about at least one thing, which is that
13 geometric isomers can mean diastereomer, and it can also mean
14 cis-trans isomer. And cis-trans isomers are a subset of
15 diastereomers.

16 And what there again has been absolutely no
17 dispute about is whether either diastereomers or cis-trans
18 isomers of methamphetamine exist. Neither diastereomers,
19 nor cis-trans isomers of methamphetamine exist. That was
20 Professor Halberstadt's testimony and that is the undisputed
21 evidentiary record upon which this Court must make its
22 determination in this case.

23 And given that neither diastereomers of
24 methamphetamine nor cis-trans isomers of methamphetamine
25 exist, and there's no alternative conception for what a

1 geometric isomer could have meant -- what California could
2 have meant by a geometric isomer, under those circumstances,
3 then the conclusion that geometric isomers of
4 methamphetamine don't exist is self-evident.

5 And if I may have one moment, Your Honor, I'd like
6 to grab the California statute that is actually at issue
7 here. And actually it may be useful. I can hand this
8 version to the Court for the Court's reference if you'd
9 like.

10 THE COURT: All right.

11 MS. REESE: So California Health and Safety Code
12 Section 11033 which is where the definition of "isomer" that
13 we're disputing about with respect to methamphetamine, where
14 it comes from, and I will note that it defines "isomer"
15 generally and broadly for use through the entire California
16 Health and Safety Code. And its definition of geometric
17 isomer notes parenthetically diastereomers, and so there was
18 a lot of discussion during cross-examination about the
19 Gold Book's definition of geometric isomer.

20 What matters here is how California has defined a
21 geometric isomer, and the parenthetical note in California
22 Health and Safety Code Section 11033 does appear to limit
23 the definition to diastereomers and diastereomeric isomers.
24 And given that limitation, Professor Halberstadt's
25 undisputed testimony that diastereomers of methamphetamine

1 do not exist conforms to the way that California itself has
2 defined geometric isomer, but either way, whether it's the
3 Gold Book definition, which is focused on cis-trans isomers
4 or the definition that appears to be apparent from the face
5 of California Health and Safety Code Section 11033, neither
6 diastereomers nor cis-trans isomers of methamphetamine
7 exist.

8 There are only two possible isomers of
9 methamphetamine, and they are L-meth and D-meth which are
10 enantiomers of each other. And under those circumstances, I
11 don't think that there is any reasonable factual dispute
12 about whether geometric isomers of methamphetamine exist.

13 THE COURT: All right. Let me hear from
14 defendant. Give me a sum up if you can.

15 MS. WAKEFIELD: Thank you, Your Honor.

16 I think it's clear that these terms do not have
17 precise meanings, that they're used differently, and they're
18 given different definitions in different contexts.

19 I think the California Health and Safety Code
20 11033, it is -- it defines "isomers" in an inclusive and
21 broad way, and it notes that the term "isomer" includes
22 optical and geometrical, and then in parens diastereomeric
23 isomers. When we contrast that with the federal definition
24 of isomer that's applicable here, it's a very limited
25 definition. It says the term "isomer" means the optical

1 isomer.

2 So the California definition is broad, and it's
3 meant to be inclusive, whereas, the federal definition is
4 narrow and meant to be limited just to optical isomers. So
5 when we have these different terms used differently in
6 different contexts, we have a treatise used in the field of
7 chemistry that defines these terms one way, we have
8 testimony that defines these terms a different way, I think
9 the California statute is meant to be broad and encompass
10 all of these different definitions, and it's meant to be
11 inclusive in these cases.

12 And so I don't think the precise question that's
13 relevant here is whether the term of "geometrical isomers"
14 as defined by the professor includes methamphetamine. The
15 question is really whether California's law definition,
16 broad definition, includes methamphetamine. And I think
17 there, given the different definitions and different
18 contexts and the broad terms used by the California
19 legislature, I think that's enough.

20 And I did also want to address the legal -- some
21 of the legal arguments. I don't know if the Court wants us
22 to do that now.

23 THE COURT: No, I'm mostly interested in this.
24 The other arguments I can grasp from the pleadings.

25 MS. WAKEFIELD: Thank you, Your Honor. One thing

1 I wanted to address is I don't think that the Court's
2 analysis should get to this question because of the cases
3 that we cited about when the overbreadth is apparent from
4 the face of the statute, that the defendant has carried his
5 burden. And that's the *Dow* {sic} decision en banc of the
6 Ninth Circuit. And so I wanted to make that point as well
7 for the Court.

8 THE COURT: Thank you. The matter will stand
9 submitted. Thank you, Doctor.

10 MR. ROSENBAUM: Just for the record, just a few
11 notes. I believe the defense has requested an opportunity
12 to cross-examine the law enforcement officer. He's driven
13 multiple hours to be here, so to the extent the Court wants
14 to hear from him --

15 THE COURT: I didn't find it necessary to hear
16 from him.

17 MR. ROSENBAUM: Understood. And then just a
18 housekeeping matter, I think we're currently set for trial
19 in mid April, and I believe both parties would --

20 THE COURT: I'll issue an order.

21 MR. ROSENBAUM: Okay. We can also file a
22 stipulation if Your Honor would like.

23 *(Thereupon, at 4:08 p.m., proceedings adjourned.)*

24

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CERTIFICATE

I hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript format is in conformance with the regulations of the Judicial Conference of the United States.

Date: April 4, 2019

/s/ Lisa M. Gonzalez

***Lisa M. Gonzalez, U.S. Court Reporter
CSR No. 5920***

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